

IN THE MATTER OF	*	BEFORE THE
McCOMAS ASSOCIATES, LLC, LEGAL		
OWNERS AND TWO FARMS, INC., LESSEE	*	BOARD OF APPEALS
AND PETITIONERS FOR SPECIAL EXCEPTION		
ON THE PROPERTY LOCATED AT 6426, 6430	*	OF
AND 6434 BALTIMORE NATIONAL PIKE		
1 <sup>st</sup> ELECTION DISTRICT	*	BALTIMORE COUNTY
1 <sup>st</sup> COUNCILMANIC DISTRICT		
	*	CASE NO: 19-245-XA

\* \* \* \* \*

### **RULING ON MOTION FOR RECONSIDERATION**

This case comes to the Board of Appeals from a final Opinion and Order dated April 30, 2019, issued by Administrative Law Judge John E. Beverungen (the "ALJ") wherein he approved the Petition for Special Exception and Variance to allow a fuel service station and convenience store and carry-out restaurant, pursuant to Baltimore County Zoning Regulation §405.2.B.1. On May 30, 2019, Majid H. Sahi, Managing Member of Sahi Petroleum Marketing, LLC filed an appeal ("Appellant"). The ALJ also had granted a variance for signage, but Appellant did not appeal that aspect of the ALJ Opinion and Order.

On June 7, 2019, a hearing notice was sent to the parties, scheduling the *de novo* hearing for August 6, 2019. Shortly thereafter, counsel for Appellees McComas Associates LLC, and Two Farms, Inc. ("Appellees") requested a postponement, which the Board granted. The Notice of Postponement and Reassignment scheduled the new hearing date for August 20, 2019. On August 20, 2019, at the scheduled time, Appellees and their counsel were present; however, no one appeared on behalf of Appellant. After waiting 20 minutes for a late arrival, the Board commenced with the hearing and received the evidence presented by Appellees. The Board deliberated and subsequently issued its Opinion on September 17, 2019, granting the Special Exception.

Appellant filed a Motion to Reconsider on October 17, 2019. Within, Appellant alleged:

(1) he did not receive notice of the August 20, 2019 hearing within ten days of its occurrence (as per Board of Appeals Rule 2); (2) the ALJ did not consider the presence of abandoned fuel stations within the vicinity of the project site (as per BCZR §405.3); and (3) the Board's September 17, 2019 Opinion failed to show proof of the public notice posting.

The Board held its deliberation on the Motion to Reconsider on November 21, 2019. The Board, for the reasons that follow, concluded that no hearing was warranted and denied Appellant's Motion.

**1. Notice**

Mr. Sahi, Appellant, asserts he did not receive notice of the August 20, 2019 hearing. The case timeline establishes:

1) On May 30, 2019, Appellant filed its appeal.

2) On June 7, 2019, the Board issued its Notice of Assignment, scheduling the hearing for August 6, 2019. The Notice identifies Appellant as a party copied on the Notice. In addition to the hearing date, the Notice identifies the County's online webpage for information on the Board of Appeals, including the Board's calendar.

3) On June 12, 2019, counsel for Appellee requested a postponement from the August 6, 2019 date and identified Mr. Sahi as an individual copied on the request.

4) On July 5, 2019, the Board issued its Notice of Postponement and Reassignment with Appellant, once again, identified as a party copied on the Notice. The Notice also, again, identifies the County's online webpage for information on the Board of Appeals, including the Board's calendar.

5) On August 20, 2019, the Board held its hearing and deliberation.

6) On September 17, 2019, the Board issued its Opinion, with Appellant being sent a copy.

7) On October 17, 2019, Appellant filed the Motion to Reconsider at issue.

The record reflects that the July 5, 2019 Notice of Postponement and Reassignment identifies Appellant as a party to whom the Board sent the Notice, consistent with Board practice and the June 6, 2019 Notice of Assignment, which identified the original hearing date, August 6, 2019.

Notably, Appellant did not appear on the original scheduled date of August 6, 2019, indicating Appellant received a copy of Appellees' request to postpone the August 6, 2019 date and/or the July 5, 2019 Notice scheduling the August 20, 2019 hearing date. At a minimum, Appellant received the original Notice and the request to postpone at the same address to which the Board mailed the July 5, 2019 Notice of Postponement and Reassignment.

Assuming *arguendo* Appellant did not receive the July 5, 2019 Notice for whatever reason, Appellant, even if pro se, still has a duty to keep aware of case developments. "[A] litigant's duties in the midst of litigation are clear. First, a litigant has a duty to keep himself informed as to the progress of a pending case." Das v. Das, 133 Md. App. 1, 19-20; 754 A.2d 441, 451, 2000, citing, Penn Cent. Co. v. Buffalo Spring & Equip. Co., 260 Md. 576, 581; 273 A.2d 97 (1971); Tasea Inv. Corp. v. Dale, 222 Md. 474, 477; 160 A.2d 920 (1960); see also, Iskovitz v. Sakran, 226 Md. 453, 455; 174 A.2d 172, 173 (1961) ("It is settled that a party to litigation, over whom the court has obtained jurisdiction, is charged with the duty of keeping aware of what actually occurs in the case and is affected with notice of all subsequent proceedings and that his actual knowledge is immaterial.") (citations omitted).

As noted in the Board's Opinion, the Board had not received any communication from Appellant from the time of the original Notice through the day of the hearing. Similarly, the Board had not received any communication from Appellant from the August 20, 2019 hearing date until

the October 17, 2019 Motion to Reconsider.

As Appellant had known of the postponement of the August 6, 2019 hearing date, Appellant failed to contact the Board to inquire about the rescheduled hearing or otherwise communicate about the case for four months. No mail was returned to the Board as undeliverable or erroneously addressed. Even more peculiar given the claim, though not dispositive, Appellant nevertheless waited approximately 30 days to contact the Board to first identify the alleged failure to receive notice. Leaving those issues aside, the Board's calendar is set forth on the County website, the address of which is provided in each Notice. Based on these events, the Board has to conclude Appellant not only failed to contact the Board to follow up on its appeal, but also failed to avail itself of the information contained on the Notice unquestionably received by Appellant. In light of the above, the Board further concludes Appellant has not been diligent in keeping aware of the status of its appeal.

**2. Abandoned Fuel Stations**

Appellant argues the ALJ failed to consider abandoned fuel stations in the vicinity of the proposed fuel service station, though required by BCZR §405.3. As this matter is a *de novo* hearing, the question for the Board focuses on the evidence in front of the Board and not on the evidentiary record in front of the ALJ. Appellees, however, did present testimony and documentary evidence regarding the conversion of former gas stations into other uses. As the Board granted the special exception, the Board was satisfied by the evidence presented.

**3. Public Posting**

Lastly, Appellant contends that the Board's Opinion fails to consider that no public notices were posted in front of the property. While unclear if Appellant is asserting that posting by public notice on the subject property was required in advance of the Board of Appeals hearing or whether

there was a deficiency prior to the ALJ hearing, Appellant cannot obtain relief under either theory.

First, the public notice requirements applicable to the ALJ are not the same as the ones applicable to the Board. The public notice procedures and requirements set forth in BCC §32-3-302(b) of the Baltimore County Code applies to the Department of Permits, Approvals and Inspections and the Administrative Law Judge. The Board of Appeals is only required to provide notice and opportunity of hearing to the parties. See, e.g. Baltimore County Charter §603; BCC §32-3-401(d); BCZR §500.11; Board of Appeals Rules 2(a) and 2(e).

Second, the ALJ specifically found that the property was properly advertised and posted. Therefore, if Appellant is referring to the ALJ record, the ALJ made an express, affirmative finding to the contrary. Appellant failed to appear at the *de novo* hearing to present evidence regarding any public notice failure that would have precluded the ALJ from considering the petition. Mr. Sahi's self-serving assertion that he regularly traveled past the property and never saw it fails to advance his argument to warrant relief at this time.

#### Conclusion

After reviewing the Motion and the case record, the Board finds none of the issues raised warrant a hearing on the Motion or relief on part of Appellant.

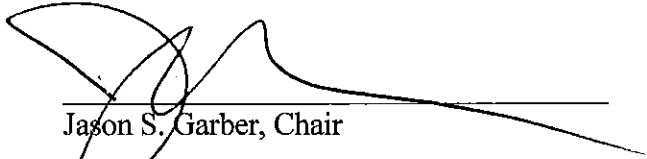
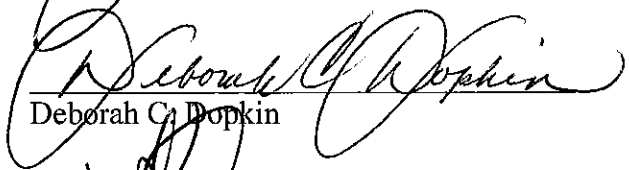

#### ORDER

**THEREFORE, IT IS THIS** 12<sup>th</sup> day of December, 2019, by the  
Board of Appeals of Baltimore County,

**ORDERED**, that the Motion to Reconsider is hereby **DENIED** for the reasons set forth herein.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
\_\_\_\_\_  
Jason S. Garber, Chair  
\_\_\_\_\_  
Deborah C. Dopkin  
\_\_\_\_\_  
Kendra Randall Jolivet



## Board of Appeals of Baltimore County

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December 12, 2019

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RE: In the Matter of: *McComas Associates, LLC – Legal Owner*  
*Two Farms, Inc. – Lessee*  
Case No.: 19-245-XA

Dear Counsel:

Enclosed please find a copy of the Ruling on Motion for Reconsideration issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington  
Administrator

KLC/taz  
Enclosure

c: Michael McComas, Managing Partner/McComas Associates, LLC  
Frank Gargiulo, Senior Vice President/Two Farms, Inc.  
Majid H. Sahi, Managing Member/Sahi Petroleum Marketing, LLC  
Mike Pierce  
Office of People's Counsel  
Paul Mayhew, Managing Administrative Law Judge  
C. Pete Gutwald, Director/Department of Planning  
Michael D. Mallinoff, Director/PAI  
Nancy C. West, Assistant County Attorney/Office of Law  
James R. Benjamin, Jr., County Attorney/Office of Law